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In the Matter of Request for Review of the Decision of the Universal Service Administrator by	:	
	:	
	:	CC Docket No. 02-6
Sharon City School District Sharon, Pennsylvania	:	
	:	
	:	
Schools and Libraries Universal Service Support Mechanism	:	

**Request for Review of the Decision of the Universal Service Administrator
Notification of Commitment Adjustment Letter Dated May 18, 2010
Regarding Form 471 # 538717, FRN 1492300
And Request for Waiver in the Alternative**

The Sharon City School District ("District" or "Applicant") appeals the May 18, 2010 Notification of Commitment Adjustment Letter ("COMAD") that seeks to recover \$249,600.36 based on an inaccurate audit finding of non-compliance with E-rate competitive bidding regulations.¹ According to USAC, an applicant is not permitted to select the most cost-effective bidder at the end of the 28 day form 470 bidding period whenever a vendor inquiry seeking more information is received on the bid deadline. When those circumstances arise, USAC mandates that the applicant is compelled to answer the vendor inquiries and provide the vendor with an opportunity to submit a late proposal – even if there is not sufficient time before the form 471 filing deadline. This is the basis for USAC's COMAD letter. The District contends that USAC has gone far beyond the FCC competitive bidding requirements as set forth in regulation and FCC precedent and has found a violation where none exists. The District requests the FCC to reverse and rescind the USAC COMAD letter.

¹ The COMAD letter is attached as Exhibit "A." The District believed that when the incorrect facts were brought to USAC's attention, USAC would rescind the COMAD. Accordingly the District timely appealed to USAC on July 16, 2010. See Exhibit "B" for a copy of the appeal. USAC denied the appeal, however, by letter dated October 29, 2010 (attached as Exhibit "C"). The District now timely files this further appeal to the FCC pursuant to 47 C.F.R. §54.720(a).

I. District Audit

The District was subject to an E-rate audit for several FY 2006 funding request numbers (FRNs), which gave rise to a negative finding concerning the procurement of internal connections equipment associated with FRN 1492300. The District received one bona fide bid from Smart Solutions and after concluding that the costs were cost-effective, awarded the contract to this vendor.

Well before the 470 bid deadline, Smart Solutions had called and requested a meeting to discuss the form 470 procurement, which the District granted in accordance with its policy of agreeing to meet with any vendor to discuss an E-rate procurement at the vendor's request. During the meeting, the District simply answered questions posed by Smart Solutions concerning the District's needs. The District did not provide any written information or materials to the vendor. Smart Solutions then submitted a bid by the 28th day after the posting of the form 470.

The auditors found, however, that the District failed to properly handle a faxed inquiry from a prospective vendor, Innovations Tech, received on the bid deadline and which requested a meeting to discuss the District's requested procurements. Innovations Tech did **not** submit a bid by the form 470 deadline but simply requested a meeting to discuss the District's needs.

The District did not grant Innovations Tech's request for a meeting, because the meeting would have occurred after the bid deadline and after the allowable contract date for the form 470. Notwithstanding the District's legitimate reasons for not meeting with Innovations Tech, the auditors (and USAC) concluded that the District failed to conduct a fair and open competitive bid and may not have selected the most cost-effective bidder.

The auditors also criticized the District for failing to obtain board approval of the contract. The District explained that the board received regular updates about the procurement and was aware of the financial impact of the project and that a vendor had been selected. The Board's official action to approve the contract was a ministerial error that was corrected retroactively by Board official action taken on April 28, 2008.

II. COMAD Letter and Appeal to SLD

On May 18, 2010, USAC issued a COMAD letter to the District to rescind funding approval and begin the process of recovering disbursed funds for the internal connections FRN at issue. The COMAD letter contained the following rationale for the rescission of funding approval and recovery of disbursed funds:

This funding commitment must be rescinded in full. During the course of an audit it was determined that the price of eligible products and services was not the primary factor in the vendor selection process. The applicant could not provide documentation to verify that price was the primary factor in the vendor selection process. FCC rules required that applicants select the most cost-effective product and/or service offering with price being the primary factor. Applicants may take other factors into consideration, but in selecting the winning bid, price must be given more weight than any other single factor. Ineligible products and services may not be factored into the most cost-effective evaluation. Additionally, on your FY 2006 FCC Form 470, you certified that you reviewed and complied with all FCC, state and local procurement/competitive bidding requirements. However, during the audit it was determined that you failed to comply with all FCC, state and local/competitive bidding requirements because the Sharon City School District entered into an agreement with Smart Solutions Inc (dba Microage) and never received the District's Board of Education approval. According to the District's policies, the Board of Education was required to authorize procurements of this size. The FCC rules requires that the applicant submits a "bona fide" require for services by conducting internal assessments of the components necessary to use effectively the discounted services they order, submitting a complete description of services they seek so that it may be posted for competing providers to evaluate and certify to certain criteria under penalty of perjury. Since you failed to show price was the primary factor and failed to comply with local and state procurement laws, you violated the complete bidding process. Accordingly, your funding commitment will be rescinded in full and USAC will seek recover of any disbursed funds from the applicant.

This explanation contains two reasons underlying the COMAD letter:

- (1) The District could not provide documentation to verify that price was the primary factor in the vendor selection process.
- (2) The District did not receive approval of its Board to enter into a contract with Smart Solutions Inc. in violation of local procurement requirements.

Both reasons were thoroughly refuted in the District's appeal submitted to USAC on July 16, 2010, a copy of which is attached as Exhibit "C."

III. USAC's October 29, 2010 Letter Denying Appeal

(1) Fair and Open Competitive Bid Process

USAC continues to focus on the fact that the District met with Smart Solutions (well before the bid deadline) but did not meet with Innovations Tech (whose request for a meeting was received on the bid deadline) and allow Innovations Tech to submit a proposal. USAC notes that the District's form 470 directed vendors to fax their questions to the District, and Innovations Tech followed the prescribed procedure for submitting inquiries. USAC concludes because the District did not allow Innovations Tech to submit a late bid, the District may not have selected the most cost-effective bidder. USAC claims, "The fact is that an additional bidder submitted an inquiry within the 28 day competitive bidding period and was not awarded an opportunity to present the full offer and be fairly evaluated against the other bidder, with price being the primary factor."

USAC's rationale is based on supposition, and is not grounded in FCC regulations or orders. USAC seeks impose such a stringent competitive bidding standard that it would have be impossible for the District to comply with the USAC defined process and still be able to timely submit a form 471 application.

Because Smart Solutions requested a meeting in advance of the bid deadline, the District granted the request. Had Innovations Tech or any other prospective bidder promptly requested a meeting² – in sufficient time to meet and for the company to prepare its proposal by the bid deadline -- the District would have granted the request and met with the vendor. It is so well known that it is axiomatic that the deadline for submitting proposals in response to a form 470 application is on before the allowable contract date. The allowable contract date for this form 470 was February 8, 2006 – a mere eight days before the February 16, 2006 form 471 filing deadline.³

The District reasonably concluded there was not sufficient time to postpone vendor selection, meet with Innovations Tech, accept a late proposal from this vendor, evaluate proposals and select the most cost-effective bidder, execute a contract, and file the form 471 application within the eight day period. It must be kept in mind that this procurement was not the District's sole FRN for FY 2006; the District also had to insure that the other FRNs were E-rate compliant and included on a form 471 application by the February 16, 2006 deadline.

² Of course, it was impossible for the District to know in advance of the bid deadline that there may be other interested bidders. It would have been impossible, therefore, for the District to proactively contact any of the other vendors and offer to share the same information it shared with Smart Solutions.

³ See Exhibit "D" for SLD Web Site Announcement.

In the Sixth Report and Order in CC Docket No. 02-6 issued September 28, 2010 (FCC 10-175), ¶86, the FCC confirmed the hallmark of a fair and open competitive bidding process:

As a general matter, all potential bidders and service providers must have access to the same information and must be treated in the same manner throughout the procurement process. Any additions or modifications to the FCC Form 470, RFP, or other requirements or specifications must be available to all potential providers at the same time and in a uniform manner.

The District adhered to this standard and code of conduct throughout the procurement at issue. The District should be permitted to select a vendor on or after the allowable contract date based on the bids received to date. An applicant should not be compelled to extend the bid due date simply because a vendor requested a meeting and did not submit a proposal by the due date. If the vendor was genuinely interested in submitting a proposal, the vendor should have submitted its inquiry well before the bid deadline so that there was adequate time to meet with the District and submit the proposal by the 470 allowable contract date. Then, the District would have met with the vendor consistent with its policy, and shared the same information with the vendor that it had shared with Smart Solutions, and Innovations Tech could have submitted a proposal by the bid deadline.

The District did not intentionally share information with Smart Solutions and withhold sharing the same information with other bidders. The District simply did not know what other potential vendors were interested in submitting a proposal, so there was no way for the District to notify these vendors and offer to meet with them. At the time that the District met with Smart Solutions, the District had not been contacted by any other vendor (including Innovations Tech) concerning its internal connections procurements. This is not a situation where the District was contacted by two vendors at or around the same time, and elected to meet with one vendor and ignored the other vendor. Nor is this a situation where the District had a pre-existing relationship with a vendor and provided preferential treatment. The District did *not* have a pre-existing relationship with Smart Solutions and selected this vendor based on an arms-length evaluation of the vendor's proposal.

USAC dwells on the fact that Smart Solutions telephoned the District and requested a meeting when the District's form 470 stated that inquiries should be faxed to the District. The Form 470, however, was silent as to how vendors should contact the District if they wanted to **meet** with the District. There was nothing to stop Innovations Tech from calling the District to request a meeting just as Smart Solutions had done. Surely, if

Innovations Tech was genuinely interested in this procurement, the company would have acted in a far more proactive manner rather than simply fax a request for a meeting and allow the bid deadline to pass.⁴

Nor is there any evidence that Smart Solutions' proposal was not cost effective. USAC claims that had the District granted a meeting to Innovations Tech, and had Innovations Tech submitted a proposal, then Innovations Tech's proposal *might* be the most cost-effective. Such an attenuated theory is based on supposition and not grounded in fact. In fact, there is no guarantee whatsoever that Innovations Tech would have chosen to submit a proposal.

For all of these reasons, the District submits that its selection of Smart Solutions complied with the E-rate competitive bidding requirements and it was not required to meet with Innovations Tech and extend the bid deadline to receive a proposal from this vendor, particularly when the form 471 deadline was only eight days after the form 470 allowable contact date/bid deadline.

(2) Compliance with Local Procurement Regulations

USAC's second claim of non-compliance relates to the District's local policies. Prior to entering into the agreement with Smart Solutions, District personnel informed Board members of the procurement and selection of the vendor. The Board was kept apprised of the project on an ongoing basis. Due to an administrative oversight of the then acting Superintendent, the contract was not submitted for official Board approval. In April of 2008, however, this oversight was rectified when via a unanimous vote the Board retroactively approved the contract.⁵

There is no dispute that the Superintendent timely signed a contract with Smart Solutions dated February 15, 2006 prior to the District's completion and submission of its form 471 application.⁶ The current dispute now seems to focus on USAC's claim in its denial letter that the District did not provide any new documentation on appeal to support its claim of retroactive approval of the contract by the Board. USAC appears not to have

⁴ In fact a review of the SPIN contact search reveals there appears to be no SPIN associated with a company named Innovations Tech and the Data Retrieval Tool for Pennsylvania and Ohio (the closest adjacent state) in FY 2006 do not report any FRNs for a company with this name or a d/b/a name.

⁵ See Exhibit "E" for the minutes of the April 28, 2008 Board meeting.

⁶ See Exhibit "F" for the Smart Solutions agreement.

received the board minutes from the April 28, 2008 meeting (attached as Exhibit “E”) which document the Board’s approval of the agreement. The District previously provided this documentation to the auditors and presumed that the information was made available to USAC.⁷

While the audit report also implies that the contract was not valid because it contained several contingencies, to the contrary, the District understood that this was a binding agreement and acted accordingly. Funds were allocated to pay for the District’s non-discounted share of the contract in the District’s board-approved 2006-2007 budget.⁸ Likewise, the auditors confirmed that the Districts approved invoice payments for the District’s non-discounted share to the service provider.⁹ At no time has the Board refuted or challenged that the District was subject to the terms of the contract. Clearly the Board has acted in a manner consistent with the legally binding nature of this agreement.

Pennsylvania case law establishes that school board approval “can be evidenced in ways other than by a formal vote recorded in the minutes.” *Mullen v. DuBois Area School District*, 439 Pa. 211, 259 A.2d 877, 1969 Pa. LEXIS 657 (1969). Although the DuBois Area School District did not formally vote to approve a teacher’s contract, the Board had acquiesced in the teacher’s appointment for over a year. “[A]t one point, he was personally feted at a Board meeting for having received a favorable commendation from the Pennsylvania Department of Public Instruction on the handling of one of his courses.” *Id.* at 215, 259 A.2d at 880. The court found that the evidence in the case showed that the board had in fact approved of the teacher’s appointment and

⁷ If the auditors’ complete work papers are not provided to USAC, the District challenges USAC’s qualification to rule on an audit appeal.

⁸ See Board Finance Committee Minutes of January 5, 2007 (attached as Exhibit “G”) setting forth an E-rate update that explains that the District received approval of funding for approximately \$300,000. FRN 1492300 was approved for funding in the amount of \$305,167.84 pursuant to a Funding Commitment Decisions Letter dated December 19, 2006. The update specifically states, “The funding provides for 90% of the project cost and the District is responsible for the remaining 10%. In anticipation of the funding, the money was budgeted for in the fiscal year 2007 budget.” (Note that the District’s Fiscal Year 2007 budget spans the period July 1, 2006 – June 30, 2007, the same period covered by the E-rate Funding Year 2006 FRN at issue in this appeal). The Management Assertion letter for the audit contained the following assertion: “The District had the resources required to make use of the services requested, or such resources were budgeted for purchase for the current, next, or other future academic years, at the time the FCC Form 70 was filed.” The auditors concluded the audit without any adverse findings concerning this assertion.

⁹ The Management Assertion letter for the audit contained the following assertion: “The District paid all “non-discount” portion of requested goods and/or services.” Item D.6. The auditors concluded the audit without any adverse findings concerning this assertion.

hiring. “We hold the requirement of a formal recorded vote to be directory only, although with the caveat that the proof from which Board approval can be inferred must be solid.” *Id. at 216, 259 A.2d at 880.*

In the current case, the evidence is overwhelming that the Sharon City School District Board approved the contract: (1) the Board was regularly apprised of the technology renovations of the two schools, and the retention of a vendor to provide the equipment; (2) the Board approved a budget that allocated the funds to pay for the non-discount share of the contract costs; (3) after E-rate funding was approved, the Board was again informed about the project and its obligation to pay the 10% share of the costs not paid for by E-rate; (4) the Board approved the payment of invoices to the vendor; and, (5) by its April 28, 2008 action, the Board officially voted to approve the contract retroactively. At no time has the Board ever acted in a manner inconsistent with the existence of a contract with the vendor.

IV. Notice of Withholding Action Prematurely Implemented

Immediately after USAC denied the appeal, a Demand Payment Letter was issued on November 1, 2010 and a second letter was issued on December 2, 2010 and at the same time a Notice of Withholding Action was issued on the same date. Given that the District is within its 60 day appeal period for submitting this appeal to the FCC, this withholding action and associated demand payment letters must be rescinded until the FCC resolves this appeal. Pursuant to the FCC's Fifth Report and Order in CC Docket No. 02-6 (FCC Rcd 15808, 15822 ¶ 43 (2004) and 47 C.F.R. §1.1910(b)(3)(i), collection and the “red light” rule is stayed.

V. Conclusion

The Sharon City School District respectfully requests that the Notification of Commitment Adjustment, Demand Repayment Letter and Notice of Withholding Action be rescinded.

Respectfully submitted,

/s/ Michael Calla
Supv., Curriculum and Instruction K8
Sharon City School District

December 28, 2010

Exhibit A

May 18, 2010 COMAD Letter



Schools and Libraries Division

Notification of Commitment Adjustment Letter

Funding Year 2006: July 1, 2006 - June 30, 2007

May 18, 2010

**BRETTON L. HIMSWORTH
SHARON CITY SCHOOL DISTRICT
625 LOCUST ST.-SUITE 1
GARDEN CITY, NY 11530**

**Re: Form 471 Application Number: 538717
Funding Year: 2006
Applicant's Form Identifier: 06-SHARON2
Billed Entity Number: 125498
FCC Registration Number: 0011917069
SPIN: 143004898
Service Provider Name: Smart Solutions Inc. (dba Microage)
Service Provider Contact Person: Dale Mesnick**

Our routine review of Schools and Libraries Program (Program) funding commitments has revealed certain applications where funds were committed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the required adjustments to your funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at http://www.fcc.gov/debt_collection/faq.html.

Schools and Libraries Division - Correspondence Unit
100 South Jefferson Road, P.O. Box 902, Whippany, NJ 07981
Visit us online at: www.usac.org/sl

TO APPEAL THIS DECISION:

You have the option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC).

If you wish to appeal the Commitment Adjustment Decision indicated in this letter to USAC your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Number(s) (FRN) you are appealing. Your letter of appeal must include the
 - Billed Entity Name,
 - Form 471 Application Number,
 - Billed Entity Number, and
 - FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.
4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
100 S. Jefferson Rd.
P. O. Box 902
Whippany, NJ 07981

For more information on submitting an appeal to USAC, please see the "Appeals Procedure" posted on our website.

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted on our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

FUNDING COMMITMENT ADJUSTMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. See the "Guide to USAC Letter Reports" posted at <http://usac.org/sl/tools/reference/guide-usac-letter-reports.aspx> for more information on each of the fields in the Report. USAC is also sending this information to your service provider(s) for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on the FRN(s), a separate letter will be sent to the service provider detailing the necessary service provider action.

Note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or your service provider(s) submits to USAC are consistent with Program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Schools and Libraries Division
Universal Services Administrative Company

cc: Dale Mesnick
Smart Solutions Inc. (dba Microage)

**Funding Commitment Adjustment Report for
Form 471 Application Number: 538717**

Funding Request Number:	1492300
Services Ordered:	INTERNAL CONNECTIONS
SPIN:	143004898
Service Provider Name:	Smart Solutions Inc. (dba Microage)
Contract Number:	SSIQ10020
Billing Account Number:	N/A
Site Identifier:	125498
Original Funding Commitment:	\$263,960.96
Commitment Adjustment Amount:	\$263,960.96
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date	\$249,600.36
Funds to be Recovered from Applicant:	\$249,600.36

Funding Commitment Adjustment Explanation:

This funding commitment must be rescinded in full. During the course of an audit it was determined that the price of eligible products and services was not the primary factor in the vendor selection process. The applicant could not provide documentation to verify that price was the primary factor in the vendor selection process. FCC rules require that applicants select the most cost-effective product and/or service offering with price being the primary factor. Applicants may take other factors into consideration, but in selecting the winning bid, price must be given more weight than any other single factor. Ineligible products and services may not be factored into the cost-effective evaluation. Additionally, on your FY 2006 FCC Form 470, you certified that you reviewed and complied with all FCC, state and local procurement/competitive bidding requirements. However, during the audit it was determined that you failed to comply with all FCC, state and local procurement/competitive bidding requirements because the Sharon City School District entered into an agreement with Smart Solutions Inc. (dba Microage) and never received the Districts Board of Education approval. According to Districts policies, the Board of Education was required to authorize procurements of this size. The FCC rules require that the applicant submits a "bona fide" request for services by conducting internal assessments of the components necessary to use effectively the discounted services they order, submitting a complete description of services they seek so that it may be posted for competing providers to evaluate and certify to certain criteria under penalty of perjury. Since you failed to show price was the primary factor and failed to comply with local and state procurement laws, you violated the competitive bidding process. Accordingly, your funding commitment will be rescinded in full and USAC will seek recovery of any disbursed funds from the applicant.

Sharon City School District E Rate Summary
Funding Year 2006-2007

471 #	FRN	SPIN	Service Provider	Discount	Request	Committed	Disbursement
538726	1492328	143003992	Curry Communications, Inc.	82	\$42,724.69	\$42,724.69	
538717	1492300	143004898	Smart Solutions Inc. (dba Microage)	90	\$307,860.53	\$263,960.96	\$249,600.36
538726	1492329	143000677	Verizon Wireless	82	\$8,856.00	\$8,856.00	
538726	1492330	143027372	SCHOOLWIRES INC.	82	\$4,099.93	\$4,099.93	
Total					\$363,541.15	\$319,641.58	\$249,600.36

Exhibit B

**Sharon City School District COMAD Appeal
July 16, 2010**



Michael J. Calla
Supervisor - Curriculum & Instruction, K-8
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Sharon, Pennsylvania 16146
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July 16, 2010

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
30 Lanidex Plaza West
PO Box 685
Parsippany, NJ 07054-0685

Appeal of Notification of Commitment Adjustment Letter

Form 471 #	538717
Funding Year:	2006
Applicant's Form Identifier:	06-SHARON2
Billed Entity Number:	125498
FCC Registration Number:	0011917069
SPIN	143004898
Service Provider Name:	Smart Solutions, Inc. (dba Microage)
Service Provider Contact Person:	Dale Mesnick

Contact Information for this Appeal

Debra M. Kriete, Esquire
510 North Third Street
Second Floor
Harrisburg, PA 17101
717 232 0222 (voice)
717 232 3705 (fax)
dmkriete@comcast.net

This appeal seeks to reverse and rescind this Notification of Commitment Adjustment Letter. The following explanation was provided in the Notification letter

Funding Commitment Adjustment Explanation:

This funding commitment must be rescinded in full. During the course of an audit it was determined that the price of eligible products and services was not the primary factor in the vendor selection process. The applicant could not provide documentation to verify that price was the primary factor in the vendor selection process. FCC rules required that applicants select the most cost-effective product and/or service offering with price being the primary factor. Applicants may take other factors into consideration, but in selecting the winning bid, price must be given more weight than any other sing factor. Ineligible products and services may not be factored into the most cost-effective evaluation. Additionally, on your FY 2005 FCC Form 470, you certified that you reviewed and complied with all FCC, stat and local procurement/competitive bidding requirements.

However, during the audit it was determined that you failed to comply with all FCC, state and local/competitive bidding requirements because the Sharon City School District entered into an agreement with Smart Solutions Inc (dba Microage) and never received the District's Board of Education approval. According to the District's policies, the Board of Education was required to authorize procurements of this size. The FCC rules requires that the applicant submits a "bona fide" require for services by conducting internal assessments of the components necessary to use effectively the discounted services they order, submitting a complete description of services they seek so that it may be posted for competing providers to evaluate and certify to certain criteria under penalty of perjury. Since you failed to show price was the primary factor and failed to comply with local and state procurement laws, you violated the complete bidding process. Accordingly, your funding commitment will be rescinded in full and USAC will seek recover of any disbursed funds from the applicant.

This explanation and basis for rescinding the funding commitment is erroneous for the following reasons:

1. Contrary to the Auditor's Incorrect Finding, Price was the Primary and Only Factor Considered in Selecting the Vendor's Bid.

This FRN was for a major internal connections project associated with two of the Applicant's school buildings, both of which qualify for a 90% discount due to having 89% and 92%, respectively, of their students qualify for the National School Lunch Program.

This procurement was the very first time that this District applied for internal connections funding. In so doing, the District fastidiously and assiduously sought to comply with the E-rate program rules.

As required by the Form 470 rules, the District specifically identified the equipment and/or services that at that time, it thought it may need, in its underlying Form 470 744450000575053.

In response to posting the form 470, the District's contact person for this form 470, Tresa Templeton, did not receive any phone call inquiries or email inquiries asking specific questions about the procurement prior to the expiration of the 28 day waiting period. The allowable contract date for this procurement was February 8, 2006.

On or about February 8, 2006, the District reviewed any and all documents that were submitted in response to the Form 470. The District received only one proposal for the internal connections equipment, from Smart Solutions Inc. dba Microage. There were no other bids received. There was an inquiry from another vendor that had been submitted but the inquiry failed to include any pricing information or a proposal.

The District explained to the auditor that based on reviewing this single responsive proposal, the District chose to retain the services of Microage. The District explained that since there was only one proposal, they evaluated it and concluded it was cost-effective. They did not engage in a full blown bid evaluation because there were no other proposals.

Apparently the auditor was not satisfied with this explanation and concluded that the District somehow did not rely on price as the primary factor in selecting the vendor. This is completely illogical since price was the sole factor relied on, since there were no other proposals to review and/or evaluate for non-cost considerations. While the Fifth Report and Order required applicants to maintain all documents related to bid selection, the Order was silent on requiring applicants to create information to justify selection of a vendor when there was only one proposal submitted:

- **Bidding Process.** All documents used during the competitive bidding process must be retained. Beneficiaries must retain documents such as: Request(s) for Proposal (RFP(s)) including evidence of the publication date; documents describing the bid evaluation criteria and weighting, as well as the bid evaluation worksheets; all written correspondence between the beneficiary and prospective bidders regarding the products and service sought; all bids submitted, winning and losing; and documents related to the selection of service provider(s). Service providers must retain any of the relevant documents described above; in particular, a copy of the winning bid submitted to the applicant and any correspondence with the applicant. Service providers participating in the bidding process that do not win the bid need not retain any documents.

Fifth Report and Order in CC Docket No. 02-6, FCC 04-190 (Rel. August 13, 2004) at para. 48. Indeed, in the FY 2006 training materials, SLD said nothing about creating documentation of the bid selection process. See http://universalservice.org/_res/documents/sl/ppt/2006-training/Program-Compliance.ppt, slide 22.

Consequently, the statement in the Notification Letter, that “The applicant could not provide documentation to verify that price was the primary factor in the vendor selection process[.]” includes a false premise that the applicant somehow committed an error by not having documentation of a bid evaluation process where there was one single proposal submitted in response to the form 470. This is a form over substance matter and penalizes an applicant for failing to produce documentation that it was not required to maintain in the first instance.

Rather than penalizing the applicant for some purported ministerial oversight – which the applicant submits is not the case but assuming for the sake of argument – the auditor should have examined the substance of the transaction and concluded that because there was a single proposal received in response to the form 470, the applicant properly reviewed the bid, concluded it was responsive and decided to contract with the vendor. There was no further justification or documentation that the applicant was required to produce. The auditor’s review of the bid should have easily substantiated the applicant’s explanation.

Nor is it surprising that the applicant only received one proposal in response to posting the form 470. Sharon is a rustbelt city that has experienced a severe economic downturn – not only recently but years in the making – to the loss of major employers such as General American and Westinghouse. The District is the 11th poorest in the State. This is not a booming metropolitan area where there are a multitude of internal connections suppliers. Sharon was fortunate to have received the proposal from Microage – a vendor that was new to the District as there was no prior customer/supplier relationship before the District posted its form 470. This was an arms length contract entered into based on the price contained in the proposal, exactly as required by E-rate competitive bidding rules.

2. Sharon School District Complied with its Local Procurement Requirements By Constantly Informing and Seeking Approval of Its Board Regarding Procurement of Internal Connections with Microage.

The Notification Letter explanation states also:

Additionally, on your FY 2005 FCC Form 470, you certified that you reviewed and complied with all FCC, stat and local procurement/competitive bidding requirements. However, during the audit it was determined that you failed to comply with all FCC, state and local/competitive bidding requirements because the Sharon City School District entered into an agreement with Smart Solutions Inc (dba Microage) and never received the District's Board of Education approval. According to the District's policies, the Board of Education was required to authorize procurements of this size.

This rationale completely disregards the substantial evidence that the District provided during the audit to document that the Board was fully aware of and approved of the procurement contract with Microage.

Because this project was a substantial undertaking for the District, considering its technology funds for five years prior to FY 2006 had been depleted due to budgetary constraints, the technology director provided constant updates to the Board at its official meetings and work sessions. During each update and informational transmission, the Board continually expressed its support for the project and for contracting with Microage. All of these board minutes were provided to the auditor and are or should be included in the auditor's workpapers.

Simply because the Board did not take an official vote on the contract does not mean that the Board failed to approve the contract. By virtue of its continually being updated about the process and status of the procurement, and by virtue of expressing no objection, the Board fully approved of the project. Further, the Board had approved all payments and disbursements to Microage pursuant to the contract at board meetings. Consequently, the Board was fully advised of, consented to, and approved the incurrence of this debt by the District at the time the contract was executed.

When the District discovered the auditors failed to consider these minutes of working sessions and board meetings to be adequate, the Board then officially voted on the contract and approved the contract retroactively on April 21, 2008.

This finding is yet another instance of the auditor concluding that form over substance should prevail and that the applicant should have to reimburse the program due to a ministerial oversight that did not adversely affect the propriety of this procurement.

In conclusion, the District complied with all competitive bidding requirements of the program, truthfully certified to all of the forms in the program and should not be required to reimburse the program. The Notification of Commitment Adjustment Letter should be rescinded and this appeal should be approved in full.

Respectfully submitted,

/s/ Michael Calla
Supv., Curriculum and Instruction K8
Sharon City School District

Exhibit C

October 29, 2010 USAC Letter Denying Appeal



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2006-2007

October 29, 2010

Debra M. Kriete
Debra M. Kriete
510 North Third Street, 2nd F.
Harrisburg, PA 17101

Re: Applicant Name: SHARON CITY SCHOOL DISTRICT
Billed Entity Number: 125498
Form 471 Application Number: 538717
Funding Request Number(s): 1492300
Your Correspondence Dated: July 16, 2010

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2006 Commitment Adjustment Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1492300
Decision on Appeal: **Denied**
Explanation:

- According to our records, the audit mentions "six other respondents to the 470 posting" but the applicant stated in the response to the auditor that they only received one bid from Smart Solutions. The applicant also stated that they honored a meeting requested by Smart Solutions to discuss the Form 470. The applicant admitted that they received a request from a potential bidder, but it was too late to meet with them because of the timeline requirements of the e-rate program and also because they did not call in their request to meet. According to the Form 470, the District checked in all service categories that they did not have an RFP. Also in Item 13a of the 470, the applicant stated: "Bids or information requests must reference this Form 470 number and must be faxed to the contact

person shown in Block 1." It was not stated that the bidder must call or email their inquiries. Making it unfair that the call from Smart Solutions for a request to meet was honored, but not a mailed inquiry when the directions to the bidders clearly state that they "must be faxed." This appears unfair when one method of contact was accepted and not another, even though both methods were not the preferred mode. Therefore, the bidder who mailed their inquiry regarding the IC project for Sharon City School District should have been given an opportunity to present the full proposal although their inquiry did not contain pricing and they did not contact the school via phone. The Form 470 does not specify the phone as a preferred mode of contact. The fact is that an additional bidder submitted its inquiry within the 28 day competitive bidding period and was not awarded an opportunity to present the full offer and be fairly evaluated against the other bidder, with price being the primary factor. For failure to receive BOE approval, you stated on appeal that the district constantly provided updates of the project to the Board, who continually gave support. Although the Board did not officially provide an approval for the contract, you argue that their continued support to the updates and not objecting to the project is equivalent to the Board's approval. In the appeal and in the audit response, you stated that in response to the audit review the Board retroactively approved the contract on April 21, 2008. You did not provide any new documentation on appeal to support these statements. You admitted on appeal that this was a clerical error and have since fixed the issue, but this still does not prove that you followed your own state and local procurement/competitive bidding requirements where the Board's approval was required. Consequently your appeal is denied.

- FCC Rules require that applicants select the most cost-effective products and/or services offering with price being the primary factor. Applicants may take other factors into consideration, but in selecting the winning bid, price must be given more weight than any other single factor. 47 C.F.R. sec. 54.511(a); Request for Review by Ysleta Independent School District, et. al., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407, 26429, FCC 03-313 para. 50 (rel. Dec. 8, 2003). Ineligible products and services may not be factored into the cost-effective evaluation. See Common Carrier Bureau Reiterates Services Eligible for Discounts to Schools and Libraries, CC Docket No. 96-45, Public Notice, 13 FCC Rcd 16570, DA 98-1110 (rel. Jun. 11, 1998).

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting

the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

Exhibit D

**FY 2006 Form 471 Window Deadline
USAC Web Site Announcement**

FY2006 Window Closes on February 16, 2006 (1/30/06)

The FY2006 window will close on Thursday, February 16, 2006 at 11:59 p.m. EST. Applicants are reminded that both Forms 470 and Forms 471 must be certified before the close of the window. If you have a PIN, you are encouraged to certify your forms online.

Remember that you must wait at least 28 days after your Form 470 is posted to this website before you

- [Perform your bid evaluations](#)
- [Choose your service provider](#)
- [Sign a contract \(if appropriate\)](#)
- [Sign, date, and submit your Form 471](#)

In addition, the following must be received by USAC or postmarked by the close of the window in order to be considered within the window:

- [Form 471 \(whether online or paper\)](#)
- [Block 6 certification of the Form 471 e-certified by the authorized person online or signed by the authorized person on paper](#)
- [The Block 5 certification of any Form 470 cited in a Funding Year 2006 Form 471 e-certified by the authorized person online or signed by the authorized person on paper. A Form 470 with completed certifications submitted in a previous year meets this requirement. Any Funding Year 2006 Form 471, Block 5 funding request based on a Form 470 whose certification has not been received by 11:59 p.m. EST on February 16, 2006, or postmarked on or before February 16, 2006, will be rejected.](#)

[Top of page](#)

Exhibit E

**April 28, 2008 Sharon City School District
Board Minutes
Approval of Smart Solutions Contract**

VI. Financial Reports

It is the recommendation of the Superintendent for the Board to approve the payment of the following bills (*Attachment A*) and to accept the following Financial Statements (*Attachments B-J*):

General Fund (compass checks)	\$493,914.99
General Fund (post approvals)	99,289.47
Cafeteria Lunch Program	104,683.30
PSERS Wire Transfer	75,459.44
Sharon Family Center	7,032.66
Student Activity Account	1,891.66
Yearbook Account	13,175.38

Attachments

1) General Fund Report	
a) Detail of Miscellaneous Receipts	Attachment B
2) Benefits Account	Attachment C
3) Cafeteria Report	
a) Detail of Expenses	Attachment D
4) Capital Reserve Account	Attachment E
5) Section 125 Fund	Attachment F
6) Sharon Family Center	Attachment G
7) Student Activity Account	Attachment H
8) Yearbook Activity Account	Attachment I
9) Athletic Fund Financial Statement	Attachment J

Motion C. Gavin Second P. Corini

Roll Call 8-Yes. (Bandzak, Corini, Gavin, Gill, Hoover, Mancino, Outrakis, Rogers). 0-No. Unanimous.

VII. Legal Report

A. Student Expulsion

It is the recommendation of the Superintendent for the Board to approve the expulsion of student #150234 from Sharon City School District for the remainder of the 2007-08 school year and to accept the Findings of Fact and Reasons of Adjudication. The student has been charged with violation of District policy #218.2 and the Student Code of Conduct. This recommendation is based upon the opinion of the hearing committee. The parent/guardian and student were afforded an opportunity to be present at a formal hearing. At the end of the expulsion period, the student may apply for readmission upon a meeting of understanding between the student, parent and administration.

Motion D. Gill Second S. Hoover

Roll Call 8-Yes. (Bandzak, Corini, Gavin, Gill, Hoover, Mancino, Outrakis, Rogers). 0-No. Unanimous.

B. Retroactive Approval of E-Rate Contract with Smart Solutions

It is the recommendation of the Superintendent for the Board to grant retroactive approval of a contract with Smart Solutions to provide Year 9 E-rate funded equipment to upgrade wiring and such, at C.M. Musser and West Hill Elementary Schools. (*Agreement on file in the Business Office*)

Motion P. Corini Second J. Outrakis

Roll Call 8-Yes. (Bandzak, Corini, Gavin, Gill, Hoover, Mancino, Outrakis, Rogers). 0-No. Unanimous.

Donna M. DeBonis, Ph.D.

Superintendent

724/983-4000

Fax: 724/981-0844



215 Forker Blvd.
Sharon, PA 16146

February 15, 2006

Mr. Joseph Szymkowiak
Smart Solutions
4385 Everhard Road
Canton, Ohio 44718

Dear Mr. Szymkowiak;

This letter will confirm the Sharon City School District's decision to purchase \$342,067.26 of network products and services from your company during the next E-rate funding year (7/1/06-6/30/07) as specified in the attached specifications and price quotations.

The procurement of these products and services will be dependent upon the following conditions:

1. Final approval of next year's fiscal budget;
2. Contract confirmation by next year's school board; and,
3. Award of associated E-rate funding.

We look forward to working with Smart Solutions on this project.

Sincerely,

Donna M. DeBonis

Donna M. DeBonis, Ph.D.
Superintendent

Attachments

Vendor Agreement

By: Vijay Jethava V.P.

Date: 2/15/2006

Exhibit F

Smart Solutions Contract

Donna M. DeBonis, Ph.D.

Superintendent

724/983-4000

Fax: 724/981-0844



215 Forker Blvd.
Sharon, PA 16146

February 15, 2006

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Smart Solutions
4385 Everhard Road
Canton, Ohio 44718

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Sincerely,

Donna M. DeBonis

Donna M. DeBonis, Ph.D.
Superintendent

Attachments

Vendor Agreement

By: Vijay Jethava V.P.

Date: 2/15/2006

Exhibit G

**January 5, 2007 Sharon City School District
Board Finance Committee Minutes**

SHARON CITY SCHOOL DISTRICT

Finance, Buildings/Grounds and Budget Subcommittee

January 5, 2007

3:00 PM

In Attendance: M. Bandzak D. Gill
M. Calla T. Templeton

Mr. Canady was excused due to a water problem at West Hill Elementary School.

I. Finance

A. City Offices

The Real Estate Tax Collector recently requested a salary increase for years 2010 and 2011. A previous increase had been granted through year 2009; however, the two (2) additional years are necessary due to the tax collector's term running from 2008 through 2011. This item was on the December Board agenda for approval, but the motion was tabled. In a discussion with Michael DeForest, County Tax Claim Bureau, it was discovered that the County will not approve the increase because the amount is more than what the two (2) neighboring cities (Farrell and Hermitage) tax collectors receive. It was uncertain what the City of Sharon intended to do with the request. There is also concern with the Wage Tax Office as noted in Item C. It was decided to postpone this request until some matters involving the Wage Tax Office can be resolved and determine if the Real Estate Tax Collector can play any role in the operations of the Wage Tax Office.

B. Finance Options

Mr. Calla and Mrs. Templeton spoke with J. Tricolti from RBC Capital Markets regarding a financing option available to the District for the new debt with the Case Avenue project. It is an interest swap called a forward hedge. Mrs. Templeton expressed her concern regarding the risk, but Mr. Tricolti stated it was no more risky than the two (2) variable rate bonds we currently have. Mr. Tricolti is willing to meet with the Board if they are interested in hearing more about this option. More importantly, Mr. Tricolti reminded the District that the timeframe for the Case Avenue project debt is ticking away. The debt available for Case Avenue decreases as the principal matures. We are in good shape through fiscal year 2008 since the principal amount is only \$5,000 for that year; however, following that time the principal amount increases to almost \$300,000.

C. City of Sharon/Sharon City School District Wage Tax Office Audit

The Board received a copy of the audit report for fiscal year 2006 in their Work Session packets. Much concern was expressed over the City using the Wage Tax Office as a bank and the significant items cited in the management letter. It was decided to schedule a meeting with the City, the District and the Auditors to further discuss these matters.

D. Municipal Revenue Services - Delinquent Tax Collection

Mr. Calla and Mrs. Templeton met with representatives from Municipal Revenue Services. This company also met with the City of Sharon who has expressed interest in the program. The program is similar to one previously discussed with XSPAND; however, Municipal Revenue Services is not a collection agency. The County still collects the delinquent taxes. A concern was expressed that they pay the District for four (4) years of taxes but acquire the liens to all prior years. We would also be locked into using them for a number of years.

It was also noted that XSPAND is involved in a lawsuit that has not yet been settled. Since this was not something the School District needs right now, it was decided to wait on these programs for now.

II. Buildings/Grounds

A. C.M. Musser Wall

Due to Mr. Canady's absence, Mr. Calla reported that the wall is a significant issue that needs to be addressed. It is currently fenced off because Mr. Canady is concerned with the wall shifting and the danger it may pose. The Committee recommends that we obtain legal advice prior to doing anything more with the wall. Mr. Calla was directed to discuss the issue with Andrews & Price.

- B. **Gargano Building Rental Property Commission**
We are in receipt of an invoice from Reinhardt's Agency regarding commission owed on the lease agreement with Steve's Teez. The total invoice is for \$6,000 payable over the next three years of the lease, however, if the total amount is paid now, Reinhardt's has agreed to a discount amount of \$5,100. The Committee recommended paying the discount amount of \$5,100 in January 2007.
- C. **Case Avenue Renovation Project**
As noted in Item B with regard to the financing option, some decisions need to be made regarding the Case Avenue project. It was decided to schedule a meeting with the architect and the full Board to discuss the project. Mr. Calla will obtain available dates from the Board.
- D. **E-rate**
Mr. Calla shared the good news that the District was awarded approximately \$300,000 in year 9 funding for E-rate. The funding provides for 90% of the project cost and the District is responsible for the remaining 10%. In anticipation of the funding, the money was budgeted for in the fiscal year 2007 budget. The project will upgrade wiring and such at C.M. Musser and West Hill Elementary Schools. We are in the process of applying for year 10 funding for the Middle/High School. Due to dissatisfaction with the current provider, we have changed E-rate providers.
- E. **Hand Soap**
Due to Mr. Canady's absence, Mrs. Templeton reported that quotes have been obtained for hand soap, and we are also looking to change the vendor as well. The District expects to save time and money with this move.

III. Budget

A. Resolution

Mrs. Templeton reported that most of the budget requests have been received and are currently being reviewed. She reminded the Committee of the unknowns at this time (the State budget, two (2) unsettled union contracts and (2) more groups expiring June 30, 2007). The Committee discussed an alternative whereby the Board will issue a Resolution in January 2007 stating taxes will not be raised above the index. The index will allow the District to raise taxes up to 2.96 mills. It was felt that adding a referendum question in addition to the mandatory Act 1 questions on the ballot would be too much and that this option was the most advantageous alternative at this time. The item will appear on the January Board agenda.

The meeting adjourned at 4:07 PM.

Respectfully Submitted,

Anna Lee Hoagland, Board Secretary